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REPORT
101-286

AMENDING THE CLAYTON ACT REGARDING INTERLOCKING DIRECTORATES AND OFFICERS

MAY 14 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 994]

The Committee on the Judiciary, to which was referred the bill (S. 994) to amend section 8 and section 10 of the Clayton Act (15 U.S.C., sections 19 and 20) regarding interlocking directorates and officers, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Interlocking Directorate Act of 1989".

"SEC. 2. Section 8 of the Clayton Act is amended to read as follows:

"SEC. 8. (a)(1) No person at the same time shall be a director or officer of any two corporations, each of which has capital, surplus and undivided profits aggregating more than $10,000,000, as adjusted pursuant to this subsection, engaged in whole or in part in commerce, other than banks, banking associations and trust companies, if

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such corporations are by virtue of their business and location of operation, competitors so that the elimination of competition by agreement between them would constitute a violation of any provision of any of the antitrust laws.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as director or officer of two corporations shall not be prohibited by this section if (A) the aggregate competitive sales of either corporation are less than $1,00,000, as adjusted pursuant to this subsection, (B) the aggregate competitive sales of either corporation are less than 1 percent of that corporation's total sales, or (C) the aggregate competitive sales of each corporation are less than 4 percent of that corporation's total sales. For purposes of this paragraph, 'aggregate competitive sales' means the aggregate gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services over the last completed fiscal year. For purposes of this section, 'total sales' means the aggregate gross revenues for all products and services sold by one corporation over the last completed fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus, and undivided profits of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30, 1988, the $10,000,000 and $1,000,000 thresholds in this section shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the Gross National Product, as published by the Department of Commerce or its successor, for the year then ended, over or under the level so established for the year ending September 30, 1989. At the beginning of October of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

"(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions of this Act is eligible at the time of this election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date on which an event causing ineligibility occurred, or, if practical, the next regularly scheduled election of directors, whichever occurs first.".

SEC. 3. Section 10 of the Clayton Act is hereby repealed.

Amend the title so as to read:

A bill to amend the Clayton Act regarding interlocking directories.

I. PURPOSE OF S. 994

S. 994 amends section 8 of the Clayton Act, which prohibits "interlocking directors"—the same persin sitting on the board of directors of competing corporations. S. 994 also repeals section 10 of the Clayton Act, which regulates the vertical interlocks between common carriers and their suppliers or customers. S. 994 has four basic purposes:

(1) it raises the jurisdictional threshold, which is based on the net worth of the company, for companies covered by section 8 to reflect our modern economy and inflation;

(2) it creates certain "de minimis" exceptions to coverage of section 8 in order to avoid application when no potential for competitive harm exists;

(3) it expands the coverage of section 8 to include officers elected or chosen by the board of directors of competing corporations in order to prevent potential harm to competition from interlocking officers; and

(4) it eliminates the requirement under section 10 that common carriers conduct competitive bidding when dealing

with companies with which they share an employee, officer or director.

II. Background of the Legislation

Sections 8 and 10 of the Clayton Act were enacted in 1914. With certain exceptions, section 8 bars the same individual from serving on the board of directors of corporations in competition with one another. Section 10 requires common carriers to conduct competitive bidding, under the supervision of the Interstate Commerce Commission (ICC), when dealing with suppliers, customers or investors with which they share an employee, officer or director. These provisions were enacted as part of the broad antitrust reforms advocated by President Woodrow Wilson and adopted by Congress in the Clayton Act to supplement the provisions of the 1890 Sherman Act. President Wilson argued that interlocking directorates were a device which concentrated economic power at the expense of the public, and the legislative history reflects that concern. As the Court of Appeals for the Ninth Circuit has stated:

> . . . the legislative materials establish that the Clayton Act was intended to supplement and strengthen the Sherman Act in preserving a free competitive economy; that interlocking directorates were regarded as a precursor to restraint and monopoly and thus as a most serious threat to free competition; and that such interlocking directorates were strongly condemned.

(*U.S. v. Crocker Nat. Corp.*, 656 F.2d 428 (1981)).

While the fundamental purpose of section 8 is still valid more than 70 years after its enactment, a number of proposals have been made in recent years to reform this section to make it more consistent with modern economic and competitive considerations. During the 99th and 100th Congress, a number of proposals were made to amend section 8. For example, the administration submitted a proposal in the 99th Congress, introduced by Senator Thurmond as S. 2163, and an identical proposal again in the 100th Congress, introduced by Senator Thurmond as a part of S. 635. Senator Metzenbaum, joined by Senator Thurmond, also introduced S. 1068 in the 100th Congress. S. 994 contains the same amendments to section 8 as found in S. 1068, which was passed unanimously by the Senate in the 100th Congress.

All of these proposals sought to retain the basic ban on individuals serving on boards of competing corporations. However, they also recognized a need for Congress to reconsider the class of corporations covered by the section and whether there should be exceptions for competitively insignificant overlaps. The absence of a realistic de minimis exception for very small competitive overlaps has discouraged qualified persons from serving as directors when no potential for competitive harm exists.

During the 99th Congress, the Committee on the Judiciary held a hearing regarding proposals to modify section 8. (See "The Interlocking Directorate Act of 1986," hearing of the Senate Committee on the Judiciary on S. 2163, 99th Cong., 2d sess; Apr. 28, 1986.) Several individuals and groups testified in favor of modifying section 8,

including the Assistant Attorney General, Antitrust Division, Department of Justice; the American Bar Association; the U.S. Chamber of Commerce; the Association of the Bar of the City of New York; the Business Roundtable, and others. A hearing was also held during the 101st Congress before the Committee on the Judiciary.

Section 10 of the Clayton Act requires common carriers to conduct competitive bidding for all contracts amounting to more than $50,000 in any one year if the other party to the transaction has a substantial interest in the carrier, or has a common director, manager, or purchasing or selling agent. The bidding is conducted in accordance with regulations adopted by the ICC.

Section 10 has a somewhat different purpose beyond that of section 8. Section 10 was specifically designed to proscribe abuses flowing from interlocking directorates among railroads and their supplies and bankers in the early part of this century. In essence, section 10 addresses "vertical" interlocks—those between a customer and supplier—while section 8 regulates "horizontal" interlocks—those between competitors. According to the Supreme Court:

> The evident purpose of section 10 of the Clayton Act was to prohibit a corporation from abusing a carrier by palming off upon it securities, suppliers and other articles without competitive bidding and at excessive prices through overreaching by, or other misfeasance of, common directors, to the financial injury of the carrier and the consequent impairment of its ability to serve the public interest.

Minneapolis & S.L. Ry. v. *United States*, 361 U.S. 173, 190 (1959) (footnote omitted). The provision was intended to protect railroads against imprudent purchases where its employees had a conflict of interest with a supplier or investor. See *Cleary* v. *Chalk*, 488 F.2d 1315, 1323 (D.C. Cir. 1973).

Section 10 has not been revised since 1914, with the result that the requirement of conducting ICC-supervised competitive bidding for all contracts which amount to more than $50,000 in any one year has become increasingly onerous and costly for common carriers.

In addition, the concern that railroads and other common carriers would be victimized by self-dealing employees has diminished over time for several reasons. First, States have enacted laws regulating corporations which hold officers and directors to a fiduciary obligation to deal in good faith when acting on behalf of the corporation and its stockholders. Second, the Federal securities laws were enacted in the 1930's to impose broad disclosure and reporting requirements on publicity held corporations and their officers and directors. For instance, Securities and Exchange Commission regulations require virtually every public company to report transactions over $60,000 that were not awarded by competitive bid in which a officer or director has an interest. See 17 C.F.R. 229.404 (1989). Third, the ICC has independent authority to approve the appointment of an officer or director of one railroad to a position with another railroad. 49 U.S.C. 11322. Finally, competition among railroads has changed in 75 years as a national transportation

system has developed and railroads are no longer the dominant method of carriage.

The provisions of S. 994 relating to interlocks between competitors would apply to railroads and other common carriers. The ICC's existing authority to oversee interlocking directorates is unaffected by this legislation.

III. History of S. 994

On May 16, 1989, Senators Metzenbaum, Thurmond, Leahy, DeConcini, Simon, and Hatch introduced S. 994. The bill was referred to the Committee on the Judiciary. A hearing was held before the committee on July 25, 1989. The committee reported an amendment in the nature of a substitute on March 22, 1990, by voice vote. Senator Kohl was added as a cosponsor of the bill as amended by the committee.

IV. Summary of the Bill

A. AMENDMENTS TO SECTION 8

S. 994 amends section 8 of the Clayton Act in three ways:

(1) it increases that jurisdictional threshold for application of the section to corporations from $1 million in net worth to $10 million in net worth;

(2) it creates three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps; and

(3) it expands the section to cover offices elected or chosen by the board of directors.

Each of these revisions is discussed in more detail below.

A. Jurisdictional threshold

Section 8 applies to corporations, "any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000 . . .". This phrase, meaning net worth, was included in the original statute enacted in 1914. Because of the substantial increase in price levels since 1914, this dollar threshold is obviously far lower than the size of corporations Congress originally sought to cover. Section (a)(1) of the bill increases this threshold to $10 million. By increasing the threshold, it is the intention of the committee to maintain the original congressional intent of applying the sections only to corporations which are engaged in some significant degree of commerce. In addition, section (a)(1) would eliminate the exemption for common carriers from application of the rules against interlocking directorates.

In addition to raising the threshold, S. 994 provides in section 8(a)(5) for an annual adjustment in the jurisdictional threshold, based on the gross national product. This provision insures that the threshold provided in the bill will be regularly modified to maintain at a realistic level the minimum net worth required for application of this section to the Nation's corporations.

B. De minimis exceptions

Section 8(a)(2) of S. 994 creates three separate de minimis exceptions to the applications of the section. The intent of the committee

is to preclude from the prohibition against interlocking directors competitive overlaps which are too small to have competitive significance in the vast majority of situations. The courts have held that the current section applies to common director situations, even if the overlap is insignificant. (See, e.g., *TRW* v. *Federal Trade Commission*, 647 F.2d 942, 948 (9th Cir. 1981); In re Borg-Warner Corp., 3 Trade Reg. Rep. (CCH), para. 22,049 (F.T.C. June 23, 1983), rev'd on other grounds, 746 F. 2d 108 (2d. Cir. 1984).

The bill provides a de minimis exception in three situations:

(1) the aggregate competitive sales of either corporation are less than $1 million;

(2) the aggregate competitive sales of either corporation are less than 1 percent of that corporation's total sales; and

(3) the aggregate competitive sales of each corporation are less than 4 percent of total sales of that corporation. If any of these three exceptions apply, the prohibition of the section would not be triggered.

In calculating whether any of these de minimis safe harbors apply, corporations subject to the act would be required to aggregate all products and services in competition with another corporation for comparison with total sales. In a case where a single corporate entity is involved, total sales will be based on total corporate sales.

When the common director or officer serves a parent corporation and the competitive overlap involves subsidiary corporations, the question arises as to when the sales of the subsidiary are attributed to the parent in order to determine when the parent corporations will be held to be competitors. It is not the intention of the committee to address the way in which the courts have determined when sales of subsidiary corporations are to be attributed to the parent. In the event that the subsidiary's sales are attributed to the parent, "total corporate sales" of the parent should include sales of the parent as well as sales of all subsidiaries for which sales should be so attributed. In a case where a common director or officer serves only a subsidiary corporation, "total corporate sales" should include only the sales of the affected subsidiary since the subsidiaries' boards are presumed to control only the actions of the subsidiaries.

It is not the intention of the committee to alter the way in which the courts have determined whether products or services sold by one corporation are in competition with products or services sold by another corporation. The courts have looked to a wide variety of factors to determine whether competition exists. (See, e.g., *TRW* v. *Federal Trade Commission*, supra; *Protectoseal Co.* v. *Barancik*, 484 F.2d 585 (7th Cir. 1973)). Similarly, it is not the intention of the committee to alter the principle that a violation of section 8 does not require a showing of harm to competition but rather is a "per se" violation. (*Protectoseal Co.* v. *Barancik*, supra; *U.S.* v. *Sears, Roebuck & Co.*, 111 F. Supp. 614 (S.D.N.Y. 1953).

The committee has determined not to modify the phrase in section 8 applying the section to "competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws." It has been argued that this language restricts the application of the bar

on common directors only to corporations which would violate section 7 by merging. However, this argument has been rejected and the courts have held this language was intended only to mean that the corporation are competitors. (See, *U.S.* v. *Sears, Roebuck & Co.*, supra.)

C. Application to officers

Section 8(a)(1) of S. 994 expands the current ban on interlocking directors to include officers. "Officers" are defined to mean officers "elected or chosen by the board of directors." The committee believes that there is an equal or perhaps greater potential for competitive harm from persons serving as officers of competitor corporations. Consequently, this expansion of the coverage of the section is warranted to bar persons from serving simultaneously as an officer of competing corporations or as an officer of one corporation and a director of a competing corporation.

D. Time of application

S. 994 contains a number of provisions intended to make clear how the standards contained in the bill are to be determined and when the prohibitions on common directors or officers are triggered. Section (a)(2) provides that "aggregate competitive sales" and "total sales" are to be determined based on sales for the last completed fiscal year. Similarly, capital, surplus and undivided profits—or net worth—is to be determined based on the net worth of the corporation at the end of the last fiscal year.

Since 1914, section 8 has provided a limited grace period in the case where a change in circumstances results in what would otherwise constitute a violation by a sitting director. S. 994 clarifies the circumstances under which this grace period applies. In a case where a change in the net worth or other affairs of a corporation (that is, the introduction of a new product line) results in a competitive overlap, there is no violation for 1 year from the change which triggered application of the section, or until the next regularly scheduled board of directors election, whichever occurs first.

This subsection provides an exception if the regularly scheduled election is so soon that it is impractical to elect a new director in that election. For example, if the event causing the statute to apply occurs on Janaury 1, and the next regularly scheduled election is January 15, it may be impractical for the corporation to select a new officer or director at that election. In that case, the officer or director should be replaced at the next regularly scheduled election or, in any event, within 1 year. In a case where the application of the grace period is unclear, resignation by the affected officer or director prior to selection of his or her replacement would insure that the corporation does not violate section 8.

B. AMENDMENTS TO SECTION 10

S. 994 repeals Section 10 of the Clayton Act (15 U.S.C. 20).

V. Section-by-Section Analysis

S. 994 strikes the existing language of section 8 and substitutes a new text. The bill eliminates the first three paragraphs of section 8

which initially applied to banks and related institutions. These provisions have been superseded by more specific provisions applicable to financial institutions. These include the Depository Institution Management Interlocks Act, 12 U.S.C. 3201, et seq., and section 10(c) of the Investment Company Act, 15 U.S.C. 80a-10c. Other specific provisions in existing law cover other industries.

The amended section 8(a)(1) adds officers to the current prohibition and raises the jurisdictional threshold for application of section 8 to $10 million in capital, surplus and undivided profits. The language that previously exempted common carriers from the requirements of section 8 has been struck.

Section 8(a)(2) provides for three de minimis exceptions to coverage of the section. It also provides that aggregate competitive sales are to be based on annual gross revenues for the last completed fiscal year and that total sales means the aggregate gross revenues for all products and services.

Section 8(a)(3) provides that the jurisdictional threshold determination shall be based on capital, surplus and undivided profits (or net worth) at the end of the last completed fiscal year.

Section 8(a)(4) defines officers to mean officers elected or chosen by the board of directors.

Section 8(a)(5) provides that the $10 million jurisidictional threshold is to be increased each year in conformity with the gross national product.

Section 8(b) provides for a grace period after a change in affairs which would make a sitting director or officer otherwise ineligible to serve. No violation would occur for 1 year after the event causing ineligibility or, if practical, the next regularly scheduled election, whichever is earlier.

Section 3 of the bill repeals section 10 of the Clayton Act.

VI. Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 29, 1990.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 994, the Interlocking Directorate Act of 1989, as ordered reported by the Senate Committee on the Judiciary, March 22, 1990. Based on Information provided by the Department of Justice, we estimate that no cost to the federal government or to state or local governments would result from enactment of this bill.

S. 994 would allow an individual to serve as a director or officer for two competing corporations (including common carriers) whose competitive sales are small or whose net worth is $10 million or less. (The current limit is $1 million or less.) The $10 million

threshold would be adjusted each year by the percentage change in the Gross National Product. The bill would also extend restrictions on interlocking directors to officers.

If you wish futher details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(for Robert D. Reischauer.)

VII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concluded that this bill will not have any regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 994 are shown as follows: existing law to be omitted is enclosed in black brackets, new matter is printed in italic and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

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TITLE 15—COMMERCE AND TRADE

CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINTS OF TRADE

* * * * * * *

§ 19. Interlocking directorates and officers

[No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any one or more of the following or any branch thereof:

[(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

[(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is

in the hands of a receiver, conservator, or other official exercising similar functions.

[(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to sections 601 to 604a of Title 12.

[(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

[(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

[(6) A bank, banking association, savings bank, or trust company not engaged in a class or clases of business in which such member bank is engaged.

[(7) A mutual savings bank having no capital stock.

[Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

[The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

[No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to subtitle IV of Title 49, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

[When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions

hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.]

(a)(1) No person at the same time shall be a director or officer of any two corporations, each of which has capital, surplus and undivided profits aggregating more than $10,000,000, as adjusted pursuant to this subsection, engaged in whole or in part in commerce, other than banks, banking associations, and trust companies, if such corporations are by virtue of their business and location of operation, competitors so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer of two corporations shall not be prohibited by this section if (A) the aggregate competitive sales of either corporation are less than $1,000,000 as adjusted pursuant to this subsection, (B) the aggregate competitive sales of either corporation are less than 1 percent of that corporation's total sales, or (C) the aggregate competitive sales of each corporation are less than 4 percent of that corporation's total sales. For purposes of this paragraph, "aggregate competitive sales" means the aggregate gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services over the last completed fiscal year. For purposes of this section, "total sales" means the aggregate gross revenues for all products and services sold by one corporation over the last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1988, the $10,000,000 and $1,000,000 thresholds in this section shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the Gross National Product, as published by the Department of Commerce or its successor, for the year then ended, over or under the level so established for the year ending September 30, 1989. At the beginning of October of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date on which an event causing ineligibility occurred, or, if practical, the next regularly scheduled election of directors, whichever occurs first.

[§ 20. Purchases by common carriers in case of interlocking directorates, etc.

[No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

[Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

[Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

[If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.]

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